In the High Court of Punjab and Haryana at Chandigarh.

CWP No.10325 of 2005
Date of decision: 17.10.2007.

Miss Jaswant Kaur Randhawa ... Petitioner

Versus

Indian Red Cross Society, District Branch,
Amritsar, through its Deputy Commissioner-cum-
President, Amritsar and others.

... Respondents

Present: Mr.Gaurav Chopra, Advocate, for the petitioner.

Mr.Govind Goel, Advocate, for the respondents.

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PERMOD KOHLI, J. (Oral):

I have heard the learned counsel for the parties at length.

The petitioner joined service with the respondent-society as a Lady Warden on 01.06.1987 on temporary basis. Vide order dated 19.07.1989, she was regularised with effect from 02.06.1989. While serving with the respondent-Society, petitioner came to be suspended on 01.07.2001 on certain allegations. She continued to remain under suspension till 24.03.2002. Thereafter, she was reinstated vide letter dated 25.03.2002 with immediate effect pending enquiry against her. Consequent upon her reinstatement, petitioner rejoined her services. She was served with a Charge-sheet dated 25.03.2002. Reply to the charge-sheet was submitted on 05.04.2002. It is not in dispute that no disciplinary enquiry

was every conducted against the petitioner pursuant to the charge-sheet served upon her. Ultimately, service of the petitioner came to be dispensed with effect from 31.05.2004 vide communication of the same date on the ground that the respondent-society is unable to sustain financial burden of the employees. One month salary in lieu of one month notice was also paid to the petitioner. After dispensing with her services,the petitioner made a representation dated 04.06.2004 with subsequent reminders, claiming retiral benefits which includes 10 months salary till April, 2005 as also the gratuity, provident fund, leave encashment and full salary for the period she remained under suspension. This representation was duly responded to vide communication dated 09.06.2004 whereby the petitioner was informed that her claim is pending consideration.

On the failure of the respondents to pay the claims, the petitioner has approached this Court through the medium of the present writ petition seeking a writ of mandamus for payment of gratuity with interest at the rate of 18% per annum and eight months salary for the period of suspension excluding the subsistence allowance etc. The maintainability of this petition has been challenged by the respondents. However, in view of the judgment of a Division Bench of this Court in the case of The District Red Cross Society, Sirsa Vs. Radha Kishan Rajpal and another, 2005 (1) Service Cases Today, 41, the issue of maintainability has been decided. The Hon'ble Division Bench has made the following observations:-

> "We respectfully agree with the views expressed by learned Single Judge in Pant

> Raj Sachdev's case (supra) and hold that a writ under Article 226 of the Constitution of India is maintainable against the India Red Cross Society and its Branches and the learned Single Judge did not commit any illegality by entertaining the writ petition filed by the respondent."

In view of the dictum of the aforesaid judgment,the writ petition is held to be maintainable.

It has been contended on behalf of the respondents that the petitioner is not entitled to gratuity as her services were terminated. The order dispensing with services of the petitioner is clearly in violation of law. Petitioner's services were not terminated on account of any punishment or pursuant to any disciplinary proceedings. Her services were simply dispensed with as the respondents were unable to shoulder the financial burden of the employees. Under these circumstances, it cannot be said that services of the petitioner have been terminated on account of any misconduct. The petitioner cannot be deprived of the gratuity. Section 4 of the Payment of Gratuity Act, 1972, imposes an obligation upon the employer to pay gratuity where the employee has served for a period of more than 5 years as a continuous service. The petitioner served the respondents continuously for a period of more than five years, thus, she is entitled to gratuity in view of the provisions aforesaid. Therefore, the respondents have no option, but to pay the gratuity. The claim of the

petitioner for full salary for the period of suspension has to be decided by the respondents. The petitioner has been paid 50% of salary as subsistence allowance during the period of suspension. Admittedly, the respondents have not taken any decision either at the time of reinstatement of the petitioner or thereafter regarding the period of suspension as to how the same is to be treated. Admittedly, no punishment has been imposed as no enquiry was every conducted,but the fact remains that the respondents are to take a decision to treat the period of suspension under the rules.

In this view of the matter, this petition is allowed with the following directions:-

(1) The respondents are directed to pay gratuity to the petitioner with statutory interest as payable under the provisions of The Payment of Gratuity Act, 1972, within a period of three months from today. If the gratuity is not paid within the time specified above, the petitioner shall be entitled to interest at the rate of 4 per cent over and above the statutory interest payable under the law.

(2) The respondents are directed to decide the period of suspension within a period of three months and if in the opinion of the respondents, the petitioner is held entitled to full salary for the period of suspension, the same be also paid to her

within a period of two months thereafter.

(3) In the event, the claim of the petitioner is rejected, it shall be by passing a speaking and well reasoned order. If the petitioner is aggrieved of the decision of the respondents as regards payment etc., she shall be at liberty to approach the competent Court in accordance with law.

17.10.2007. (PERMOD KOHLI)
BLS JUDGE

Note: Whether to be referred to the Reporter? YES/ NO